SUPREME COURT OF THE UNITED STATES

Washington, D. C.

Chambers of
The Chief Justice
1929 Twenty-fourth Street, N. W.

December 30, 1944

Honorable Francis Biddle
Attorney General of the United States
Department of Justice
Washington, D. C.

Dear Mr. Attorney General:

By direction of the Supreme Court I transmit to you herewith a rule of criminal procedure for the District Courts of the United States which has been prescribed by the Supreme Courts pursuant to the Act of May 9, 1942, 56 Stat. 271. The rule is as follows:

> "Rule regulating criminal appeals by the United States under the Act of May 9, 1942, 56 Stat. 271:
>
> "Rules of criminal procedure after plea of guilty, or verdict or finding of guilt, promulgated from time to time pursuant to the Act of February 24, 1933, c. 119 (47 Stat. 904) as amended shall be applicable to appeals by the United States under the Act of May 9, 1942, c. 295, s 1 (56 Stat. 271), 18 U.S.C. 682, except that the time for taking such appeals shall be as prescribed by the said Act of May 9, 1942."

The Court requests you, as provided in that Act, to report this rule to the Congress at the beginning of the regular session in January next.

I have the honor to remain

Respectfully yours

(signed) Harlan F. Stone

Chief Justice of the United States

OFFICE OF THE ATTORNEY GENERAL

Washington, D. C.

January 3, 1945

To the Senate and House of Representatives of the
United States of America in Congress assembled:

I have the Honor to report to the Congress under the provisions of the Act of May 9, 1942, chapter 295 (56 Stat. 271; U.S. Code, title 18, sec. 682), at the beginning of a regular session thereof commencing on the 3d day of January, 1945, the enclosed rule regulating criminal appeals by the United States under the Act of May 9, 1942 (56 Stat. 271).

By letter of December 30, 1944, from the Chief Justice of the United States, a copy of which is transmitted herewith, I am advised that such rule has been prescribed by the Supreme Court pursuant to the Act of May 9, 1942, chapter 295; and I am requested by the Supreme Court to report this rule to the Congress at the beginning of the regular session in January 1945.

Respectfully,

(signed) Francis Biddle

Attorney General.

SUPREME COURT OF THE UNITED STATES

Washington, D. C.

Chambers of

The Chief Justice

1929 - 24th Street, N. W.

December 16, 1943.

Mr. Arthur T. Vanderbilt
744 Broad Street
Newark, New Jersey.

Dear Mr. Vanderbilt:

Following your conference with the Court on the subject, the Court has given further consideration to the question whether the proposed rules should not be submitted to Congress, and has now reached the following conclusions:

(1) That it is desirable, before submission of the proposed rules to Congress, that they should receive the consideration of the judicial conferences in all of the ten circuits and that any suggestions and criticisms of the rules which may be formulated as the result of those conferences should be considered by the Committee.

(2) That the amendments of the rules already proposed by the Committee, and such others as it may now be ready to propose which have not been submitted to the conferences, should be submitted to them and generally circulated among members of the Bench and Bar, as was done in the case of the Rules of Civil Procedure.

(3) That the rules and proposed amendments should not be submitted to Congress until they have been circulated as suggested, considered by the circuit conferences and the Committee, and then considered by the Court.

In order that the Court may have opportunity for proper consideration of the rules and any further amendments which may be proposed, before their submission to Congress, it will be necessary that they be finally submitted to the

Court with the recommendations of the Committee not later than September 1, 1944. It is therefore desirable that such steps be taken now as may be needful to insure consideration of the rules as amended, by the several judicial conferences and by the Bench and Bar, in time to enable the Committee and the Court to act upon their suggestions before transmitting the rules to Congress. I therefore suggest that you in cooperation with the Circuit Justices, by some plan to be agreed upon endeavor to arrange with the several Senior Circuit Judges dates for the conferences of their respective circuits which will make it possible to carry out this plan. The Circuit Justices will be glad to cooperate to this end. The Court will also undertake to make a study of the proposed rules in their present form and the amendments which have already been proposed, and to communicate to you by the end of the present term such suggestions and criticisms as they may wish to make.

Yours sincerely

/s/ Harlan F. Stone

SUMMARY OF CHANGES IN THE PRELIMINARY DRAFT OF

FEDERAL RULES OF CRIMINAL PROCEDURE

The purpose of this memorandum is to indicate the differences between the preliminary draft of the Federal Rules of Criminal Procedure and the revised draft submitted to the Supreme Court. This memorandum summarizes only those changes in the preliminary draft which affect the substance and does not list minor stylistic alterations and improvements which do not affect the meaning.

As there have been some changes in the numbers of the rules, the numbers here used are those which are attached to the rules in the revised draft, the corresponding numbers used in the preliminary draft being indicated in parentheses, if there is any difference between them.

Rule 1.

No change.

Rule 2.

No change.

Rule 3.

There is a minor change in this rule, in that the last four words, -- "and filed with him" were stricken out. The rule defines "complaint." Filing should be no part of the definition.

Rule 4(a).

A new sentence is inserted in lines 5-6: "The warrant may be issued to any officer authorized by law to serve it." This provision embodies what is generally regarded as existing law and it seemed desirable to include it in the interest of clarity.

Rule 4(b)(1).

No change, except that the last sentence was carried forward and embodied in the first sentence, in the interest of succinctness.

Rule 4(b)(2).

No change.

Rule 4(c)(1).

No change.

Rule 4(c)(2).

This paragraph has been changed so as to provide that "A warrant or a summons may be executed or served anywhere within the jurisdiction of the United States." The effect of this provision would be to simplify and eliminate some of the steps in the present practice in respect to the arrest of fugitives. The existing procedure in such cases is as follows: a warrant is issued in the district where the prosecution is instituted and is delivered to the marshal, who then files a non est return; the original warrant, the papers on which it was issued and the non est return are then transmitted to the district in which the fugitive has been arrested or in which it has been expected to apprehend him; and a new warrant is issued in that district. Under this rule it will be possible to eliminate several of the steps and merely to transmit the original warrant to the district where the fugitive is found. This warrant will then constitute authority for the arrest. This change will not affect the rights of the defendant in respect to removal, for whatever other removal proceedings would be otherwise required would still have to be taken.

This change was suggested by the Committee on United States Commissioners created by the Conference of Senior Circuit Judges and of which Honorable Carroll C. Hincks, United States District Judge for the District of Connecticut, is Chairman. It was also suggested by Honorable John E. Miller, United States District Judge for the Eastern District of Arkansas and Honorable H. Church Ford, United States District Judge for the Eastern District of Kentucky, as well as by several United States Attorneys and private practitioners.

Rule 4(c)(3).

No change.

Rule 4(c)(4).

No changes except of a purely stylistic nature.

Rule 5(a).

This rule has been revised in the interest of clarity, in order to avoid what appeared to be an unintended but implied ambiguity. There has been no change in meaning.

Rule 5(b) of the Preliminary Draft.

This rule has been stricken and nothing inserted in its place. There is widespread and emphatic opposition to the rule among Federal judges, high federal officials and the bench and bar generally. Opposition was expressed at every judicial conference that has taken place. Resolutions opposing the rule were adopted at the Judicial Conferences for the Third and Ninth Circuits and the Institute on Criminal Rules held by the American Bar Association at its recent annual meeting. The following Federal judges, among others, have expressed an affirmative

objection to the rule, either by letters to the Committee or by speeches or other statements:

Circuit Judges: Honorable Herbert F. Goodrich of the Third Circuit;
Honorable John J. Parker of the Fourth Circuit;
Honorable Harvey M. Johnsen of the Eighth Circuit;
Honorable Elwood Hamilton of the Sixth Circuit;
Honorable John B. Sanborn of the Eighth Circuit;
Honorable Joseph Woodrough of the Eighth Circuit;
and,
Honorable Harold M. Stephens of the United States Court of Appeals for the District of Columbia.

District Judges: Honorable William F. Smith of the District of New Jersey;
Honorable Leslie R. Darr of the Eastern and Middle Districts of Tennessee;
Honorable Mac Swinford of the Eastern and Western Districts of Kentucky;
Honorable Shackelford Miller of the Western District of Kentucky;
Honorable Fred M. Raymond of the Western District of Michigan;
and,
All District Judges of Michigan, generally.

Honorable John C. Knox of the Southern District of New York;
Honorable Alfred D. Barksdale of the Western District of Virginia;
Honorable John C. Collet of the Eastern and Western Districts of Missouri;
Honorable John E. Miller of the Western District of Arkansas;
and,
Honorable Gunnar H. Nordbye of the District of Minnesota.

The Attorney General; Honorable J. Edgar Hoover, Director of the Federal Bureau of Investigation, and Honorable Elmer L. Irey, Chief Coordinator of the Treasury Enforcement Agencies, opposed the rule. It was also opposed by former Attorney General Homer Cummings; by the attorneys of the Criminal Division of the Department of Justice; numerous United States Attorneys; Floyd E. Thompson, President of the Chicago Bar Association; and various bar committees, as well as a number of private practitioners.

The opposition was based on two distinct grounds. Many objected to the rule on the merits. Others felt strongly that irrespective of its merits the subject should be left to development by future judicial decisions, in view of the fact that the McNabb and Anderson cases seem to be the first to lay down the principle involved in the rule. It was urged that it was premature to crystallize the rule at this time but that it should be left to future elucidation and development by later decisions. It was pointed out that this is in accord with the general principle proposed by the Committee that rules of evidence should be left to judicial decisions instead of being formulated in the Rules. (See Rule 28).

Rule 5(b) of revised draft.

(This corresponds to Rule 6(a) of the Preliminary Draft.)

No change, except that the phrase "right to counsel" is modified to read "right to retain counsel," in order to make it clear that the defendant is entitled to retain counsel to appear in his behalf at a hearing before a commissioner and to avoid the possible implication that he is entitled to have counsel assigned to him for that purpose if he is without counsel. It was the intention of the Committee that counsel should be assigned only for proceedings in court as distinguished from preliminary proceedings before commissioners. This is in accord with present practice.

The Committee has also inserted a provision that the commissioner shall inform the defendant that he is not required to make a statement (Lines 14-16).

Rule 5(c).

(This corresponds to Rule 6(b) of the Preliminary Draft.)

No change, except that the last sentence of the original rule was stricken out. The deleted provision was a requirement that if the commissioner who conducted the preliminary hearing was not the commissioner who issued the warrant, the former should notify the latter of the disposition of the case. It was deemed that the requirement was unnecessary and even if needed could be handled administratively by the Administrative Office of the United States Courts.

Rule 6(a).

(This corresponds to Rule 7(a) of the Preliminary Draft.)

No changes, except slight stylistic improvements in the first sentence.

Rule 6(b)(1).

(This corresponds to Rule 7(b)(1) of the Preliminary Draft.)

Bias as a ground for challenging grand jurors was omitted, because of urgent suggestions that bias of a grand juror was not recognized as a ground of challenge at common law and is not recognized in the federal

courts today, in view of the fact that historically grand jurors could act on their own personal knowledge and their own initiative. Today occasionally grand juries act on their own initiative and in such a situation they can hardly be said to be impartial. These suggestions were advanced by Honorable Orie L. Phillips, United States Circuit Judge for the Tenth Circuit, and by the Federal judges of Michigan, as well as by the Criminal Division of the Department of Justice, and by a number of United States Attorneys and private practitioners.

Rule 6(b)(2).

(This rule corresponds to Rule 7(b)(2) of the Preliminary Draft.)

The same change was made in this rule as was made in Rule 6(b)(1), immediately preceding, and for the same reason. In the second sentence, the word "need" was changed to "shall" in order to conform to the existing statute (U.S.C., Title 18, Sec. 566(a)). Other minor changes made were purely stylistic.

Rule 6(c).

(This corresponds to Rule 7(c) of the preliminary draft.)

No change.

Rule 6(d).

(This corresponds to Rule 7(d) of the preliminary draft.)

The word "clerks" was deleted in the enumeration of persons who may be present in the grand jury room. Minor stylistic changes were also made.

Rule 6(e).

(This corresponds to Rule 7(e) of the preliminary draft.)

The first sentence is new. It was intended to give expression to the existing right of attorneys for the government to secure a copy of the transcript of the testimony given before the grand jury for use in the performance of their duties.

In line 53, the words "and other judicial proceedings" were changed to "a judicial proceeding." Other minor changes were made of a purely stylistic nature.

Rule 6(f).

(This rule corresponds to Rule 7(f) of the preliminary draft.)

The phrase "the judge in open court" is changed to read "a judge in open court."

Rule 6(g).

(This rule corresponds to Rule 7(g) of the preliminary draft.)

Minor stylistic changes were made.

Rule 7(a).

(This rule corresponds to Rule 8 of the preliminary draft.)

The first sentence of the rule as contained in the preliminary draft was stricken as surplusage. In addition there were minor stylistic changes.

Rule 7(b).

(This rule corresponds to Rule 8(b) of the preliminary draft.)

Additional safeguards to surround a waiver of indictment have been inserted, namely, requirement that the defendant be advised of the nature of the charge and of his rights and that the waiver be in open court. On the other hand, the requirement contained in the preliminary draft that the defendant in such a case be represented by counsel was stricken. It has been pointed out by a number of judges that this requirement would have resulted in delays, whereas the principal purpose of the provision for waiver of indictment is to make it possible for a defendant unable to give bail and desiring to plead guilty to avoid any unnecessary preliminary incarceration in jail.

Rule 7(c).

(This rule corresponds to Rule 8(d) of the preliminary draft.)

Rule 8(c) of the preliminary draft containing the requirement of leave of court to file an information has been stricken because of objections on the part of a number of judges, as well as United States Attorneys. It did not seem logical that permission of the court should be required for the institution of a prosecution. The first part of Rule 8(d) was carried into Rule 7(c) which otherwise remains unchanged.

Rule 7(d).

(This rule corresponds to Rule 8(e) of the preliminary draft.)

No changes.

Rule 7(e).

(This rule corresponds to Rule 8(f) of the preliminary draft.)

Minor stylistic changes were made.

Rule 7(f).

(This is a new rule and there is no corresponding provision in the preliminary draft.)

It has been suggested that the omission in the preliminary draft of any reference to a bill of particulars may be construed as an implication that bills of particulars were abolished. This was not the intention of the Committee and accordingly this provision for bills of particulars was inserted, with a limitation on the time when a motion for a bill may be made in order to preclude the use of such motions for dilatory purposes.

Rule 8(a).

(This corresponds to Rule 9(a) of the preliminary draft.)

No change.

Rule 8(b).

(This corresponds to Rule 9(b) of the preliminary draft.)

The words "or resulting in" are deleted from the clause "or in the same series of acts or transactions constituting or resulting in an offense or offenses." The last sentence was revised in the interest of clarity.

Rule 9(a).

(This corresponds to Rule 10(a) of the preliminary draft.)

The first sentence has been clarified as to phraseology. Minor stylistic changes in the balance of the paragraph.

Rule 9(b)(1).

(This corresponds to Rule 10(b)(1) of the preliminary draft.)

A provision was added at the end of the paragraph to the effect that "the amount of bail may be fixed by the court and endorsed on the warrant." The purpose of this provision is to permit the continuation of a desirable practice now prevailing in some districts, under which the amount of bail is endorsed by the court on a warrant issued pursuant to indictment, in order that bail may be promptly given by the defendant before a commissioner or clerk of the court. Otherwise it would be necessary to bring the defendant before the court, at times necessitating his detention in jail over night or even longer in districts embracing large areas.

This change was urged by a number of judges.

Rule 9(b)(2).

(This corresponds to Rule 10(b)(2).)

No change.

Rule 9(c)(1).

(This corresponds to Rule 10(c)(1) of the preliminary draft.)

The last sentence of the paragraph is new and was added for the purpose of expressly imposing on the arresting officer the duty of bringing the arrested person promptly before the court.

Rule 9(c)(2).

(This corresponds to Rule 10(c)(2) of the preliminary draft.)

Minor stylistic changes.

Rule 10.

(This corresponds to Rule 11 of the preliminary draft.)

The only change is the omission of the words "if he consents," thereby rendering unnecessary a consent of the defendant to a statement of the substance of the charge instead of a reading of the entire indictment at the arraignment. This change was urged by a number of judges and corresponds to present practice. A defendant may be better protected by having stated to him the substance of the charge than by a reading of the entire indictment which may mystify him, especially as under this rule he would be informed of his right to a copy of the indictment.

Rule 11.

(This corresponds to Rule 12 of the preliminary draft.)

There has been deleted the requirement that the court shall not accept a plea of guilty without first determining that the indictment or information charges an offense. Objection to this requirement was urged by a number of judges.

In the second sentence the clause "or if the court refuses to accept a plea of guilty" was inserted for the purpose of covering every possible contingency.

Rule 12(a).

(This corresponds to Rule 13(a) of the preliminary draft.)

Revision in phraseology in the interest of clarification, without any change in substance.

Rule 12(b)(1).

(This corresponds to Rule 13(b)(1) of the preliminary draft.)

Minor stylistic changes.

Rule 12(b)(2).

(This corresponds to Rule 13(b)(2) of the preliminary draft.)

The phraseology has been revised in the interest of clarity, without change of substance.

Rule 12(b)(3).

(This corresponds to Rule 13(b)(3) of the preliminary draft.)

Minor stylistic changes.

Rule 12(b)(4).

(This corresponds to Rule 13(b)(4) of the preliminary draft.)

This paragraph has been revised as to phraseology in the interest of clarity without any change in substance.

Rule 12(b)(5).

(This corresponds to Rule 13(b)(5) of the preliminary draft.)

The first two sentences are new and are intended expressly to reserve to the defendant the right to plead over if a preliminary motion is decided against him.

The last sentence is new and is intended to embody the existing statutory provisions tolling the statute of limitations in the event that an indictment or information is dismissed on a ground not involving the merits. (U.S.C., Title 18, Secs. 556 (a), 587 and 588.)

Rule 13.

(This corresponds to Rule 14 of the preliminary draft.)

The words "at any time upon motion of the defendant, of the government, or of its own motion," were deleted as unnecessary.

A new sentence has been added providing that a severance of defendants may be granted only before trial. This was deemed necessary in order to preserve the rights of prosecution in the case of a defendant who has been placed in jeopardy.

Rule 14.

(This corresponds to Rule 15 of the preliminary draft.)

No change.

Rule 15.

(This corresponds to Rule 16 of the preliminary draft.)

No change.

Rule 16.

(This corresponds to Rule 17 of the preliminary draft.)

This rule, which relates to notice of alibi, has been completely rewritten and changed in substance. Under the original rule a defendant intending to offer proof of alibi was required to give notice only in the event that the government first served a specification on the defendant. In other words the defendant would have been obligated to serve a notice of alibi only if the government served what amounted to a demand for such notice. Serious objection was interposed to the requirement that the government make the first move. It was urged that this feature of the rule made it absolutely ineffective. Under the revised rule, which in this respect corresponds to the statutory provisions in the majority of those States which embody such a provision in their codes, the defendant would have to take the first step by serving a notice of alibi or at least by moving to require the government to specify the time and place of the commission of the alleged offense.

Rule 17.

(This corresponds to Rule 18 of the preliminary draft.)

Minor stylistic changes without any modification in substance.

Rule 18.

(This corresponds to Rule 19 of the preliminary draft.)

This rule relates to discovery in behalf of the defendant. The words "not privileged" have been stricken and the following clause inserted in lieu thereof: "obtained from or belonging to the defendant or constituting evidence in the proceeding." This change effectuates more clearly than the previous text of the rule the actual intention of the Committee.

Rule 19.

(This corresponds to Rule 20 of the preliminary draft.)

A provision for issuing subpoenas in blank has been added to Rule 17(a).

For the sake of clarity paragraph (a) has been divided into two, numbered (a) and (b), and the remaining paragraphs re-numbered. There are minor stylistic changes.

Rule 20.

(This corresponds to Rule 40(a) of the preliminary draft.)

The rule has been transferred to a more logical place.

Rule 21.

(This corresponds to Rule 40(b) of the preliminary draft.)

No change.

Rule 22.

(This corresponds to Rule 40(c)(1) of the preliminary draft.)

There are minor stylistic changes. The only change in substance is the elimination of the requirement of representation by counsel as a prerequisite to defendant's consent to plead guilty in the district where he is arrested, if the prosecution was instituted in another district. In addition the word "certified" is deleted from the phrase "certified copy of the indictment or information."

Rule 23.

(This corresponds to Rule 40(c)(2) of the preliminary draft.)

In the interest of clarity the rule has been subdivided into three subsections.

Rule 24.

(This corresponds to Rule 40(d) of the preliminary draft.)

Minor stylistic changes.

Rule 25.

(This corresponds to Rule 21 of the preliminary draft.)

Minor stylistic changes.

In Subsection (b), in the interest of clarity, the words "at any time before verdict" are inserted.

Rule 26.

(This corresponds to Rule 22 of the preliminary draft.)

Subsection (c) relating to alternate jurors is changed by striking out the provision under which an alternate juror might replace a regular juror after the jury has retired and its deliberations have commenced. The rule is made to correspond to Rule 47(b) of the Federal Rules of Civil Procedure, under which alternate jurors may replace regular jurors only prior to the time the jury retires to consider its verdict. This change was made in view of the doubtful constitutionality of the original provision.

Rule 27.

(This corresponds to Rule 23 of the preliminary draft.)

No change.

Rule 28.

(This corresponds to Rule 24 of the preliminary draft.)

The phrase "in the light of reason and experience" has been added at the end of the last sentence. This addition does not change the meaning, but merely clarifies the purpose of the rule. The words "they may be" are inserted immediately preceding the word "interpreted."

Rule 29.

(This corresponds to Rule 25 of the preliminary draft.)

No change.

Rule 30.

(This corresponds to Rule 26 of the preliminary draft.)

A provision has been inserted requiring expert witnesses appointed by the court to advise the parties of their findings, if any. The last provision of the original rule, requiring parties to give notice of names of expert witnesses to be called by them, was stricken.

Minor stylistic changes were made.

Rule 31.

(This corresponds to Rule 27 of the preliminary draft.)

In Subsection (b), ten days was changed to five days, to conform to a similar time limitation on motions for a new trial.

Minor stylistic changes were also made.

Rule 32.

(This corresponds to Rule 28 of the preliminary draft.)

The first sentence was changed to correspond to Rule 51 of the Federal Rules of Civil Procedure: the words "at the close of the evidence unless further time is granted" were changed to read - "at the close of the evidence or at such earlier time during the trial as the court reasonably directs."

Rule 33.

(This corresponds to Rule 29 of the preliminary draft.)

Subsection (e) was changed by striking out a provision for a stipulation that verdict may be by a majority of the jurors. Objections were raised to this provision as being unrealistic in that no defendant would be likely to stipulate that a verdict which is less than unanimous shall be accepted. Rule 25 contains a provision for stipulating that the jury shall consist of less than twelve. This is, however, a different matter.

Rule 34(a).

(This corresponds to Rule 30(a) of the preliminary draft.)

This provision was rewritten in the interest of clarity. Part of the first sentence was stricken as unnecessary. The rule, however, is not substantially changed. The last sentence of Rule 34(b) was transferred to this rule.

Rule 34(b).

(This corresponds to Rule 30(b) of the preliminary draft.)

No change, except that last sentence was transferred to Rule 34(a).

Rule 34(c)(1).

(This corresponds to Rule 30(c)(1) of the preliminary draft.)

The second sentence of the original rule has been stricken. Many judges objected to the requirement contained in it that a presentence investigation shall not be commenced until after conviction, indicating that as a practical matter this restriction would result in diminishing the use of presentence investigations.

Rule 34(c)(2).

(This corresponds to Rule 30(c)(2) of the preliminary draft.)

Minor stylistic changes.

Rule 34(d).

(This corresponds to Rule 30(d) of the preliminary draft.)

A provision has been added empowering the court to set aside the judgment of conviction and to permit the defendant to withdraw a plea of guilty even after sentence, in order to correct manifest injustice. Minor stylistic changes were also made.

Rule 34(e).

(This corresponds to Rule 30(e) of the preliminary draft.)

No changes.

Rule 35.

(This corresponds to Rule 31(c) of the preliminary draft.)

The last sentence relating to motions for a new trial based upon the ground of newly discovered evidence has been extended by including therein motions made upon the ground that the defendant has been deprived of a constitutional right. The purpose of this amendment was to make it possible for the trial court to hear some of the matters that are now raised by a writ of

habeas corpus in the district in which the defendant is imprisoned.

The time within which to make a motion for a new trial on the grounds other than newly discovered evidence was changed from three days to five days.

Rule 36.

(This corresponds to Rule 31(d) of the preliminary draft.)

The time to make a motion in arrest of judgment was changed from three days to five days after verdict or finding.

Rule 37.

(This corresponds to Rule 31(b) of the preliminary draft.)

The words "without regard to whether the term of court at which the sentence was imposed has expired" were stricken as surplusage, in the light of the general provision found in Rule 47(c) of the revised draft.

The words "upon motion made" were stricken.

Rule 38.

(This corresponds to Rule 31(a) of the preliminary draft.)

The words "of its own initiative or on the motion of any party" were stricken as surplusage.

Rule 39(a)(1).

(This corresponds to Rule 35(a)(1) of the preliminary draft.)

The requirement that in addition to filing a notice of appeal, a copy of the notice must be served upon the adverse party has been stricken, in order to correspond with the Civil Rules, which contain no such requirement. (Rule 73(a) of the Federal Rules of Civil Procedure).

Rule 39(a)(2).

(This corresponds to Rule 35(a)(2) of the preliminary draft.)

The second sentence relating to the preservation of the right of a defendant to appeal, if he is not represented by counsel, has been revised in the light of numerous objections on the part of many Federal judges, but the substance has been preserved. A defendant who is not represented by counsel and who is convicted after trial would be advised of his right to appeal and at his request the clerk would prepare and file notice in his behalf.

Rule 39(b).

(This corresponds to Rule 35(b) of the preliminary draft.)

No change except a minor one of a stylistic nature.

Rule 40.

(This corresponds to Rule 36 of the preliminary draft.)

No change except minor ones of a stylistic nature.

Rule 40 of the preliminary draft.

This rule has been shifted and becomes Rules 20-24 of the present draft. (See supra.)

Rule 41(a).

(This corresponds to Rule 37(a) of the preliminary draft.)

No change except a minor one of a stylistic nature.

Rule 41(b).

(This corresponds to Rule 37(b) of the preliminary draft.)

Paragraph 2, which provided for the printing of pertinent portions of the record as appendices to briefs has been stricken. This was done in the light of objection on the part of all of the Circuit Judges for the Tenth Circuit and the Senior Circuit Judge for the Fifth Circuit, on the ground that the so-called "Appendix" Rule was not considered suitable for the Circuit Courts of Appeals for those Circuits. This action leaves open the matter of printing records, which thereby becomes subject to regulation by individual Circuit Courts of Appeals. This is the same situation as exists in the Civil Rules.

Minor stylistic changes were made in paragraph (2).

Rule 41(c).

(This corresponds to Rule 37(c) of the preliminary draft.)

No change.

Rule 37(d) of the preliminary draft.

This rule has been stricken and nothing substituted in its place. The conclusion was reached that it was surplusage and unnecessary.

Rule 41(d).

(This corresponds to Rule 37(e) of the preliminary draft.)

This rule was changed so as to substitute present Rule X of the Rules of Criminal Appeals. The changes are of minor significance.

Rule 42.

(This corresponds to Rule 32 of the preliminary draft.)

This rule has been rewritten and revised in the interest of clarity, without change of substance.

Rule 43.

(This corresponds to Rule 33 of the preliminary draft.)

A number of verbal changes have been made in the interest of clarity, without change of substance.

Rule 44.

(This corresponds to Rule 34 of the preliminary draft.)

No change, except minor stylistic alterations and a change in the heading of paragraph (b).

Rule 45.

(This corresponds to Rule 38 of the preliminary draft.)

No change.

Rule 46.

(This corresponds to Rule 39 of the preliminary draft.)

This rule has been rewritten in the interest of clarity and succinctness, without any change in substance. The first sentence has been omitted as unnecessary.

Rule 47.

(This corresponds to Rule 41 of the preliminary draft.)

There are minor stylistic changes only.

Rule 48.

(This corresponds to Rule 42 of the preliminary draft.)

There are verbal and stylistic changes in the interest of clarity and accuracy, without, however, change in substance.

Rule 49.

(This corresponds to Rule 43 of the preliminary draft.)

No change.

Rule 50.

(This corresponds to Rule 44 of the preliminary draft.)

No change.

Rule 51.

(This corresponds to Rule 45 of the preliminary draft.)

Minor stylistic change.

Rule 52.

This is a new rule.

Rule 53.

(This corresponds to Rule 46(a) of the preliminary draft.)

No change.

Rule 46(b) of the preliminary draft has been stricken as unnecessary.

Rule 54.

(This corresponds to Rule 47 of the preliminary draft.)

Minor stylistic change.

Rule 55.

(This corresponds to Rule 48 of the preliminary draft.)

No change.

Rule 56.

(This corresponds to Rule 49 of the preliminary draft.)

No change.

Rule 57.

(This corresponds to Rule 50 of the preliminary draft.)

A number of verbal and stylistic changes were made without any change in substance.

In Subsection (a)(5) a reference to proceedings under the Federal Juvenile Delinquency Act was added.

In Subsection (c) the definition of "officer" was stricken as unnecessary. A definition of "attorney for the Government" was added. Rule 13(c) of the preliminary draft was transferred in the form of a definition to Subsection (c).

Rule 58.

(This corresponds to Rule 51 of the preliminary draft.)

A minor stylistic change.

Rule 59.

(This corresponds to Rule 52 of the preliminary draft.)

No change.

Rule 60.

(This corresponds to Rule 53 of the preliminary draft.)

No change.

Rule 61.

(This corresponds to Rule 54 of the preliminary draft.)

No change.

Rule 62.

(This corresponds to Rule 55 of the preliminary draft.)

Minor stylistic change.

Rule 63.

(This corresponds to Rule 56 of the preliminary draft.)

No change.

Memo of Errors Noted in Mimeographed Final Draft Criminal Rules

Rule 3, line 3. "made upon oath before a commissioner". This ... "made upon oath and lodged with a commissioner".

Rule 7, ...

Rule 9, p. 17, lines ..., ... What law and statute are meant? ... statutory ... or state law, and many are agents for all ...

Rule 1..., p. 27, line ... "the court may permit it". I think this would ... "unless the court permits it".

Rule 13, p. ..., line ... This line would be better if it read: ... to be tried, etc.

Rule 14, p. ..., line ... after defendants.

Rule 19, p. 29, line 10. ... insert "in like form".

Rule 19, p. 31, line ... "or at such other place as is fixed by the court". ... for a witness as El Paso. ... power.

Rule 19, p. 30, lines 40. ... that the draft has comma only after the ... of a group of three ... The G.P.O. Style Book specifies a comma after each of a group of three or more, and that is not the generally accepted style.

p. 30, line 43. The figure 1 should be spelled one.

Rule 35, p. 45, line 10. I think Judge Coleman has a strong case for a change, but probably none can now be made.

Rule 3..., p. 46, line 13. 'the' would better be 'such'.

Rule 37, p. 51. The district court may reduce a sentence (line 6) "within 60 days after receipt of an order of the Supreme Court denying" certiorari. How does the district court receive such an order? Is not the practice to transmit notice of such an order (or a copy thereof) to the circuit court of appeals which then notifies the district court by sending down its mandate which has been withheld until application for certiorari.

Rule 39, p. 54, line 7. "the clerk". Which clerk? The CCA clerk or the clerk below.

Rule 42, p. ..., line ... I do not prefer semicolon after "pending" and lower case ...

Rule 47, p. 7..., line ... "rules" and insert "enlarge" after ...

Rule 47, p. 73, line ... ...

Rule 57, p. ..., lines 1 and 14. ... technically correct, but ... first half (in line 5 after United States and ... second half) in line 11 at end thereof would be safer.

57, p. 9..., lines 58 and 61. ... commas instead of semicolons.

57, p. 9, lines 95, ... Capitalize Attorney General, and in line 96, lower case "Attorney".

gfl